ATTORNEY FOR APPELLANT:

BRIDGETTE F. GREENE
Elkhart, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

DEANNA L. BRUNNER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RANDI HOPE ARAUJO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0508-CR-364
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0503-FA-54 and 20C01-0504-FA-72

September 12, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Randi Hope Araujo (Araujo) appeals the sentence imposed by the trial court, after she pleaded guilty to two counts of possession of methamphetamine, as class C felonies, and one count of delivery of methamphetamine weighing 3 grams or more, as a class A felony.

We affirm.

ISSUE

Whether the sentence imposed by the trial court was inappropriate in light of the nature of the offense and character of the offender.

FACTS

On March 28, 2005, in cause number 20C01-0503-FA-00054 (Cause FA-54), Araujo was charged with Count 1, dealing in narcotics, a class A felony, and Count 2, possession of methamphetamine, a class C felony. On April 22, 2005, in cause number 20C01-0504-FA-00072 (Cause FA-72), Araujo was charged with Count 1 dealing in methamphetamine, a class A felony.

Araujo entered into a plea agreement with the State, wherein she pleaded guilty in Cause FA-54 to the lesser-included offense of Count 1, a class C felony, and to Count 2, a class C felony, and in Cause FA-72, she pleaded guilty as charged. Sentencing was left to the discretion of the trial court. A pre-sentence investigation report (PSI) was ordered.

On July 21, 2005, the trial court held a sentencing hearing. The trial court reviewed the PSI, heard arguments of counsel and a statement from Araujo and announced the following aggravating and mitigating factors:

> Court will find these to be aggravating circumstances. First, is you have a prior felony offense, receiving stolen property, in this court for which a violation of probation occurred resulting in your incarceration for the presumptive sentence of one and a half years. Court will find that to be an aggravating circumstance as well as the misdemeanor offense that you had, your violation of probation, and your failure to appear in the misdemeanor offense.
>
> Court believes those factors are indicative of your unwillingness or inability due to addictions to learn anything from your prior involvement with court orders. We tried fines; we tried costs; we tried suspended sentences; we tried good behavior. It just simply didn't work because here we are now with three more felonies. All of those factors the Court will find to be aggravating circumstances.
>
> Mitigating circumstances you're 24 years of age. You're still a young lady. I'll find that to be [sic] mitigator. You've told me you [sic] got a serious drug addictions [sic] issue. Likewise, I'll find that to be a mitigator, and you've accepted responsibility.

(Tr. 14-15). The trial court sentenced Araujo to four years executed on each count in Cause FA-54 to run concurrently with one another but, consecutively to her sentence in Cause FA-72, wherein she was sentenced to "the presumptive sentence of 30 years at the Indiana Department of Correction[]" with five years suspended. (Tr. 16).

DISCUSSION

Araujo argues her sentence is inappropriate in light of her character. Araujo directs our attention to Indiana Constitution Art. VII, Section 4, and Rule 7[1] of the Indiana Rules of Appellate Practice seeking an independent review of her sentence. She argues that "[a]ny sentence beyond the minimum 10 years. . . is penal in nature given the particular facts and circumstances of this case" in violation of Indiana's constitutional provision mandating rehabilitation. Araujo's Br. 5. We disagree.

[1] The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in the light of the nature of the offense and the character of the offender. Ind. App. Rule 7(B).

Generally, sentencing determinations are within the trial court's discretion. Bonds v. State, 729 N.E.2d 1002, 1004 (Ind. 2000). However, pursuant to Indiana Appellate Rule 7(B), upon consideration of a challenge to the sentence imposed by the trial court, we may revise that sentence if it "is inappropriate in light of the nature of the offense and the character of the offender." When considering the appropriateness of the sentence for the crime committed, we initially focus upon the presumptive[2] sentence. Rodriguez v. State, 785 N.E.2d 1169, 1179 (Ind. Ct. App. 2003), trans. denied. The presumptive sentence is meant to be the starting point for the trial court's consideration of the sentence that is appropriate for the crime committed. Id. The presumptive sentence for a class A felony is thirty years. Ind. Code § 35-50-2-4. Twenty years may be added for aggravating circumstances and ten years may be subtracted from the presumptive sentence if mitigating factors are found. Id. The presumptive sentence for a class C felony is four years, with two years added for aggravating circumstances or not more than two years subtracted for mitigating circumstances. I. C. § 35-50-2-6.

In this matter, Araujo was sentenced to the presumptive sentence on all counts. The trial court found mitigators: Araujo's age, her drug addiction, and taking responsibility for the crimes she committed. The trial court then balanced those mitigators against the aggravating factors of her criminal history and her past failures on

[2] After Araujo committed the class A felony offense for which she pleaded guilty, and before she was sentenced, Indiana Code section 35-50-2-1.3 (2005) was amended to provide for an "advisory" rather than "presumptive" sentence. Another panel of this court recently held that the change constituted a substantive rather than procedural change that should not be applied retroactively. Weaver v. State, 845 N.E.2d 1066, 1072 (Ind. Ct. App. 2006), trans. denied.

less restrictive sentences, like probation. We cannot say that the presumptive sentences were inappropriate in light of the nature of the offense and character of the offender.

We affirm.

VAIDIK, J., concurs.
RILEY, J., concurs in result.